UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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| LINGXI KONG, LYNN MOORE and JING YE, on behalf of themselves and others similarly situated,<br><br>Plaintiffs,<br><br>vs.<br><br>SWCC USA 1234, LLC (formerly known as WEDDERSPOON ORGANIC USA, LLC) SWCC INVESTMENTS INC. (formerly known as WEDDERSPOON ORGANIC, INC.), WEDDERSPOON ORGANIC USA, LLC, WEDDERSPOON ORGANIC INC. (formerly known as 101884 B.C., LTD.), and WEDDERSPOON ORGANIC HOLDINGS, LP,<br><br>Defendants. | : | Case No. 15 CV 1635 (JBW) (JO)<br><br>**DEFENDANTS WEDDERSPOON ORGANIC USA, LLC, WEDDERSPOON ORGANIC INC., AND WEDDERSPOON ORGANIC HOLDINGS, LP'S ANSWER TO FIRST AMENDED CLASS ACTION COMPLAINT** |

Defendants Wedderspoon Organic USA, LLC, Wedderspoon Organic Inc. (formerly known as 101884 B.C., LTD.), and Wedderspoon Organic Holdings, LP (jointly, "Defendants") answer Plaintiffs Lingxi Kong, Lynn Moore, and Jing Ye's (jointly, "Plaintiffs") First Amended Class Action Complaint ("FAC"), with each paragraph number referring to the paragraph in the FAC bearing the same number, as follows:

## NATURE OF THE ACTION[1]

**1.** Defendants admit that Manuka honey has been the subject of a number of scientific studies. Defendants lack knowledge or information sufficient to form a belief as to the remaining allegations contained in Paragraph 1, and on that basis deny them.

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[1] For the Court's convenience, Defendants use the FAC's headings and section titles in this Answer, but do so without admitting any allegation therein.

**2.** Defendants admit that Manuka honey is a highly sought after product, and that New Zealand is the source of some of the world's rarest and highest-quality honeys. Defendants lack knowledge or information sufficient to form a belief as to the remaining allegations contained in Paragraph 2, and on that basis deny them.

**3.** Defendants admit that the Manuka honey industry is mostly unregulated. Defendants deny the remainder of the allegations contained in the first sentence of Paragraph 3. Defendants deny the second sentence of paragraph 3. Defendants lack knowledge or information sufficient to form a belief as to the remaining allegations contained in Paragraph 3, and on that basis deny them.

**4.** Paragraph 4 contains Plaintiffs' characterizations of this action and does not require a response. To the extent a response is required, Defendants deny all allegations contained in Paragraph 4.[2]

**5.** Defendants lack knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 5, and on that basis deny them.

**6.** Defendants admit that they do not have a license agreement with UMFHA, but specifically deny the implied allegation that any such license is or was necessary. Defendants lack knowledge or information sufficient to form a belief as to the remaining allegations in Paragraph 6, and on that basis deny them.

**7.** Defendants lack knowledge or information sufficient to form a belief as to the allegations in Paragraph 7, and on that basis deny them.

**8.** Defendants admit that Manuka honeys produced in New Zealand can have a wide range of qualities, flavors, and consistencies. Defendants further admit that some Wedderspoon

[2] In Paragraph 34 of the FAC, Plaintiffs define "Products." This Answer uses the same term as Plaintiffs have defined it.

Manuka honey products are sourced from New Zealand's South Island. Defendants lack knowledge or information sufficient to form a belief as to the remaining allegations in Paragraph 8, and on that basis deny them.

**9.** Defendants lack knowledge or information sufficient to form a belief as to the allegations in Paragraph 9, and on that basis deny them.

**10.** Defendants admit that they do not have a license agreement with UMFHA, and that the Products have not been certified by the UMFHA, but specifically deny the implied allegation that any such license is or was necessary. Defendants lack knowledge or information sufficient to form a belief as to the implied allegation that UMFHA tests and/or certifies honey products as having particular antibacterial potency levels, and on that basis denies it. Defendants deny the remainder of the allegations contained in Paragraph 10.

**11.** Defendants admit that Plaintiffs purport to have written a CLRA demand letter, dated February 23, 2015 on its face, to SWCC USA 1234, LLC, but lack knowledge or information sufficient to form a belief as to the remainder of the allegations contained in the first sentence of Paragraph 11, and on that basis deny them. Defendants admit that the labeling for certain Manuka honey products was changed, labels bearing "KFactor 12" or "KFactor 16" designations began to appear to consumers, and labels bearing Active 12+ and Active 16+ designations were phased out. Defendants deny the remainder of the allegations contained in Paragraph 11, and specifically deny the implied allegation that the Products' labels changed as a result of Plaintiffs' purported CLRA demand letter.

**12.** Paragraph 12 contains Plaintiffs' characterizations of this action and does not require a response. To the extent a response is required, Defendants deny all allegations contained in Paragraph 12.

**13.** Paragraph 13 sets forth legal conclusions that do not require a response. To the extent a response is required, Defendants deny all allegations contained in Paragraph 13.

## JURISDICTION AND VENUE

**14.** Defendants lack knowledge or information sufficient to form a belief as to the allegations in Paragraph 14, and on that basis deny them.

**15.** Defendants deny all allegations contained in Paragraph 15.

**16.** Defendants deny all allegations contained in Paragraph 16.

**17.** Defendants deny all allegations contained in Paragraph 17.

**18.** Defendants lack knowledge or information sufficient to form a belief as to the allegations in the first sentence of Paragraph 18, and on that basis deny them. Defendants deny the remainder of the allegations contained in Paragraph 18.

**19.** Defendants admit that certain of the Products are sold in New York State. Defendants deny the remainder of the allegations set forth in Paragraph 19, and in particular deny that this Court has personal jurisdiction over Wedderspoon Organic Inc.

**20.** Defendants deny all allegations contained in Paragraph 20.

## PARTIES

### *Plaintiffs*

**21.** Defendants admit that Plaintiff Lingxi Kong purchased a unit of Wedderspoon Manuka honey in 2014 from www.wedderspoon.com, but deny the remaining allegations regarding Plaintiff's purchase contained in Paragraph 21. Defendants deny the allegation in the final sentence of Paragraph 21 that they made misrepresentations. Defendants lack knowledge or information sufficient to form a belief as to the remaining allegations in Paragraph 21, and on that basis deny them.

**22.** Defendants deny the allegation in the final sentence of Paragraph 22 that they made misrepresentations. Defendants lack knowledge or information sufficient to form a belief as to the remaining allegations in Paragraph 22, and on that basis deny them.

**23.** Defendants deny the allegation in the final sentence of Paragraph 23 that they made misrepresentations. Defendants lack knowledge or information sufficient to form a belief as to the remaining allegations in Paragraph 23, and on that basis deny them.

***Predecessor Defendants***

**24.** Defendants lack knowledge or information sufficient to form a belief as to the allegations in Paragraph 24, and on that basis deny them.

**25.** Defendants lack knowledge or information sufficient to form a belief as to the allegations in Paragraph 25, and on that basis deny them.

**26.** Defendants admit that pursuant to an Asset Purchase Agreement (the "Agreement") dated November 21, 2014, SWCC USA 1234, LLC (prior to its name change from Wedderspoon Organic USA, LLC) and SWCC Investments Inc. (prior to its name change from Wedderspoon Organic, Inc.) sold all of their assets, properties and rights (with the exception of certain specifically defined excluded assets) to Wedderspoon Organic USA, LLC, Wedderspoon Organic Inc. (formerly known as 101884 B.C. Ltd.) and Wedderspoon Organic Holdings, LP. Defendants admit that after the date of the Agreement, Wedderspoon Organic USA, LLC changed its name to SWCC USA 1234, LLC and Wedderspoon Organic, Inc. (incorporated in British Columbia) changed its name to SWCC Investments, Inc. Defendants deny the remainder of the allegations contained in Paragraph 26.

**27.** Defendants deny all allegations contained in Paragraph 27.

***Successor Defendants***

**28.** Defendants deny that the address listed in the first sentence in Paragraph 28 is the correct address for Wedderspoon Organic USA, LLC's registered agent for service of process. Defendants admit the remaining allegations contained in the first sentence of Paragraph 28. Defendants deny the remainder of the allegations contained in Paragraph 28.

**29.** Defendants admit that the address listed in the first sentence of Paragraph 29 is Wedderspoon Organic Inc.'s principal place of business. Defendants deny the remainder of the allegations in the first sentences of Paragraph 29. Defendants admit the allegations in the second sentence of Paragraph 29, and state that the name of the corporation is Wedderspoon Organic Inc. Defendants deny the remainder of the allegations contained in Paragraph 29.

**30.** Defendants deny that the address listed in the first sentence in Paragraph 30 is the correct address for Wedderspoon Organic Holdings, LP's registered agent for service of process. Defendants admit the remaining allegations contained in Paragraph 30.

**31.** Defendants deny all allegations contained in Paragraph 31**.**

## FACTUAL ALLEGATIONS

**Defendants**

**32.** Defendants deny all allegations in Paragraph 32**.**

**33.** Defendants admit that certain honey products can be purchased in the United States through the online store at www.wedderspoon.com, and that certain honey products, including certain Manuka honey products, can be ordered from Amazon, eBay, www.vitacost.com, or www.drugstore.com. Defendants deny the remainder of the allegations contained in Paragraph 33**.**

**Manuka Ratings Claims**

**34.** Defendants admit that at certain times some of them manufactured, marketed, and sold various Products in various grades (including Active 12+ and Active 16+), sizes (including 11.5 ounce and 17.6 ounce containers), and prices. Defendants deny the remainder of the allegations contained in Paragraph 34.

**35.** Defendants admit that they do not have a license agreement with UMFHA and the Products are not certified or approved by the UMFHA to have UMFHA's ratings, but specifically deny the implied allegation that any such license or certification is or was necessary. Defendants deny the remainder of the allegations contained in Paragraph 35.

**36.** Defendants deny all allegations contained in Paragraph 36.

**37.** Defendants deny all allegations contained in Paragraph 37.

**38.** Defendants deny the allegations in the first, third, and fourth sentences in Paragraph 38. Defendants lack knowledge or information sufficient to form a belief as to the remaining allegations in Paragraph 38, and on that basis deny them.

**39.** Defendants deny all allegations contained in Paragraph 39.

**40.** Defendants deny all allegations in the first sentence of Paragraph 40. Defendants lack knowledge or information sufficient to form a belief as to the remaining allegations in Paragraph 40, and on that basis deny them.

**41.** Defendants deny all allegations in the first and second sentences of Paragraph 41. Defendants lack knowledge or information sufficient to form a belief as to the remaining allegations in Paragraph 41, and on that basis deny them.

**42.** Defendants deny all allegations contained in Paragraph 42.

**43.** Defendants deny all allegations contained in Paragraph 43.

**44.** Defendants deny all allegations in the first, second, third, fourth, and ninth sentences of Paragraph 44, regarding the Wedderspoon website. Defendants lack knowledge or information sufficient to form a belief as to the remaining allegations in Paragraph 44, and on that basis deny them.

**45.** Defendants admit that the quoted language appears on the Wedderspoon website. Defendants lack knowledge or information sufficient to form a belief as to the allegation that the UMFHA requires all UMF honeys to be natural and without artificial ingredients as alleged in the final sentence of Paragraph 45, and on that basis deny it. Defendants deny the remaining allegations contained in Paragraph 45**.**

**46.** Defendants deny all allegations contained in Paragraph 46.

**47.** Defendants admit the Products labeled as Active 12+ and Active 16+ were not certified by UMFHA, but specifically deny the implied allegation that any such certification was necessary**.**

**48.** Defendants lack knowledge or information sufficient to form a belief as to the allegations in Paragraph 48, and on that basis deny them.

**49.** Defendants deny all allegations contained in Paragraph 49.

**50.** Defendants deny all allegations contained in Paragraph 50.

**51.** Defendants admit that the labeling for certain Manuka honey products was changed, labels bearing "KFactor 12" or "KFactor 16" designations began to appear to consumers, and labels bearing Active 12+ and Active 16+ designations were phased out. Defendants deny that Wedderspoon Organic Inc. was involved in the labeling change. Defendants further deny the implied allegation that the Products' labels changed as a result of Plaintiffs' purported CLRA demand letter, and deny the remaining allegations contained in Paragraph 51.

**52.** Defendants admit that they received purported CLRA demand letters from Plaintiffs dated August 11, 2015. Defendants deny the remainder of the allegations in Paragraph 52.

**53.** Defendants admit that the quoted text appears on the Wedderspoon website at the URL provided. Defendants further admit that each KFactor number corresponds to a minimum pollen grain count in the honey. Defendants deny the remaining allegations contained in Paragraph 53.

**The Impact of Defendants' Deceptive Conduct**[3]

**54.** Defendants admit they do not have a license agreement with UMFHA, but deny the implied allegation that any such license is or was necessary. Defendants further admit that Exhibits 6 and 7 appear to be printouts from the www.wedderspoon.com website. Defendants deny the remainder of the allegations contained in Paragraph 54.

**55.** Defendants admit that they possess certain knowledge regarding the Products. Defendants deny the remaining allegations contained in Paragraph 55.

**56.** Defendants deny all allegations contained in Paragraph 56.

**57.** Defendants lack knowledge or information sufficient to form a belief as to the allegations in the second sentence of Paragraph 57, and on that basis deny them. Defendants deny all remaining allegations contained in Paragraph 57.

**58.** Defendants deny all allegations contained in Paragraph 58.

**59.** Defendants deny they made false or misleading claims. Defendants lack knowledge or information sufficient to form a belief as to the remaining allegations contained in Paragraph 59, and on that basis deny them.

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[3] Again, Defendants use the FAC's headings and section titles in this Answer, but do so without admitting any allegation therein.

**60.** Defendants lack knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 60, and on that basis deny them.

**61.** Defendants deny they made false or misleading claims. Defendants lack knowledge or information sufficient to form a belief as to the remaining allegations contained in Paragraph 61, and on that basis deny them.

**62.** Defendants deny all allegations contained in Paragraph 62.

**63.** Defendants lack knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 63, and on that basis deny them.

**64.** Defendants deny all allegations contained in Paragraph 64.

**65.** Defendants deny all allegations contained in Paragraph 65.

**66.** Paragraph 66 contains Plaintiffs' characterizations of this action and does not require a response. To the extent a response is required, Defendants deny all allegations contained in Paragraph 66.

**67.** Paragraph 67 contains Plaintiffs' characterizations of this action and does not require a response. To the extent a response is required, Defendants deny all allegations contained in Paragraph 67.

## CLASS ACTION ALLEGATIONS

### The Nationwide Class

**68.** Paragraph 68 contains Plaintiffs' proposed class definition and does not require a response. To the extent a response is required, Defendants deny all allegations contained in Paragraph 68, including denying that this action satisfies the requirements of Federal Rule of Civil Procedure 23.

**The New York Class**

**69.** Paragraph 69 contains Plaintiffs' proposed New York subclass definition and does not require a response. To the extent a response is required, Defendants deny all allegations contained in Paragraph 69, including denying that this action satisfies the requirements of Federal Rule of Civil Procedure 23.

**The California Class**

**70.** Paragraph 70 contains Plaintiffs' proposed California subclass definition and does not require a response. To the extent a response is required, Defendants deny all allegations contained in Paragraph 70, including denying that this action satisfies the requirements of Federal Rule of Civil Procedure 23.

**71.** Paragraph 71 contains Plaintiffs' proposed class definition and does not require a response. To the extent a response is required, Defendants deny all allegations contained in Paragraph 71.

**72.** Paragraph 72 is premature. Defendants expressly reserve the right to object to any attempt by Plaintiffs to amend their class or subclass definitions.

**73.** Defendants deny all allegations contained in Paragraph 73, and specifically deny that this action may be maintained as a class action pursuant to Federal Rules of Civil Procedure 23(b)(1)(B) and (b)(3).

**74.** Defendants deny all allegations contained in Paragraph 74, and specifically deny that this action may be maintained as a class action pursuant to Federal Rule of Civil Procedure 23.

**75.** Defendants deny the allegations contained in Paragraph 75 and each subpart thereof, including but not limited to denying that there are many questions of law and fact common to the claims of Plaintiffs and the members of the proposed class, and that this action may be maintained as a class action pursuant to Federal Rule of Civil Procedure 23.

**76.** Defendants deny all allegations contained in the first sentence of Paragraph 76. Defendants lack knowledge or information sufficient to form a belief as to the remaining allegations contained in Paragraph 76, and on that basis deny them.

**77.** Defendants lack knowledge or information sufficient to form a belief as to the allegation that Plaintiffs purchased the Products during the Class Period, and on that basis deny it. Defendants deny all the remaining allegations contained in Paragraph 77, including denying that Plaintiffs' claims are typical of those of the Class, and that this action may be maintained as a class action pursuant to Federal Rule of Civil Procedure 23.

**78.** Defendants lack knowledge or information sufficient to form a belief as to the allegations in Paragraph 78, and on that basis deny them.

**79.** Defendants deny all allegations contained in Paragraph 79, including denying that a class action is superior to other methods for resolution of this purported controversy, and that this action satisfies the requirements of Federal Rule of Civil Procedure 23.

**80.** Defendants deny all allegations contained in Paragraph 80, including denying that this action satisfies the requirements of Federal Rule of Civil Procedure 23(b)(2).

**81.** Defendants deny all allegations contained in Paragraph 81, including denying that this action satisfies the requirements of Federal Rule of Civil Procedure 23(b)(3).

**82.** Defendants deny all allegations contained in Paragraph 82.

**83.** The first sentence of Paragraph 83 contains Plaintiffs' characterizations of this action and does not require a response. To the extent a response is required, Defendants deny all allegations contained in the first sentence of Paragraph 83. Defendants deny all allegations contained in the remainder of Paragraph 83.

**CAUSES OF ACTION**

**COUNT I**
**[Injunction – New York General Business Law § 349]**

**84.** Defendants reallege and incorporate by reference their responses contained in all preceding paragraphs.

**85.** Paragraph 85 contains Plaintiffs' characterizations of this action, and does not require a response. To the extent a response is required, Defendants deny all allegations contained in Paragraph 85.

**86.** Paragraph 86 contains Plaintiffs' quotation of a statute, and does not require a response. To the extent a response is required, Defendants admit that the quoted language appears in the statute cited.

**87.** Paragraph 87 contains Plaintiffs' quotation of case law and argument, and does not require a response. To the extent a response is required, Defendants deny the allegations contained in Paragraph 87 and deny that Paragraph 87 contains a correct and/or complete statement of law.

**88.** Defendants deny all allegations contained in Paragraph 88.

**89.** Defendants deny all allegations contained in Paragraph 89.

**90.** Defendants deny all allegations contained in Paragraph 90.

**91.** Paragraph 91 contains Plaintiffs' characterization of their sought-after relief, and does not require a response. To the extent that a response is required, Defendants deny the allegations therein, including but not limited to denying that Plaintiffs are entitled to any relief.

**COUNT II**
**[New York General Business Law § 349]**

**92.** Defendants reallege and incorporate by reference their responses contained in all preceding paragraphs.

**93.** Paragraph 93 contains Plaintiffs' characterizations of this action, and does not require a response. To the extent a response is required, Defendants deny all allegations contained in Paragraph 93.

**94.** Paragraph 94 contains Plaintiffs' characterization of New York law and argument, and does not require a response. To the extent a response is required, Defendants deny the allegations contained in Paragraph 94 and deny that Paragraph 94 contains a correct and/or complete statement of law.

**95.** Defendants deny all allegations contained in Paragraph 95.

**96.** Defendants deny all allegations contained in Paragraph 96 and each subpart thereof.

**97.** Defendants deny all allegations contained in Paragraph 97.

**98.** Defendants deny all allegations contained in Paragraph 98.

**99.** Defendants deny all allegations contained in Paragraph 99.

**100.** Defendants deny all allegations contained in Paragraph 100.

**101.** Defendants deny all allegations contained in Paragraph 101.

**102.** Defendants deny all allegations contained in Paragraph 102.

**103.** Defendants deny all allegations contained in Paragraph 103.

**COUNT III**
**[California Consumer Legal Remedies Act,**
**Cal. Civ. Code § 1750, *et seq.*]**

**104.** Defendants reallege and incorporate by reference their responses contained in all preceding paragraphs.

**105.** Paragraph 105 contains Plaintiffs' characterizations of this action, and does not require a response. To the extent a response is required, Defendants deny all allegations contained in Paragraph 105.

**106.** The second sentence of Paragraph 106 contains Plaintiffs' legal conclusions, and does not require a response. To the extent a response is required, Defendants deny all allegations contained in the second sentence of Paragraph 106. Defendants lack knowledge or information sufficient to form a belief as to the remaining allegations contained in Paragraph 106, and on that basis deny them.

**107.** Paragraph 107 contains Plaintiffs' legal conclusions, and does not require a response. To the extent a response is required, Defendants deny all allegations contained in Paragraph 107.

**108.** Defendants deny all allegations contained in Paragraph 108.

**109.** Defendants admit that they do not have a license agreement with UMFHA and the Products are not certified by UMFHA, but specifically deny the implied allegation that any such license or certification is or was necessary. Defendants deny the remainder of the allegations contained in Paragraph 109.

**110.** Defendants admit that the California Consumers Legal Remedies Act, Cal. Civ. Code § 1770(a)(5), contains the quoted language. Defendants deny the remainder of the allegations contained in Paragraph 110.

**111.** The first sentence of Paragraph 111 contains Plaintiffs' characterization of California law, and does not require a response. To the extent a response is required, Defendants deny that Paragraph 111 contains a correct and/or complete statement of law. Defendants deny the remaining allegations contained in Paragraph 111.

**112.** Defendants admit that Cal. Civ. Code § 1770(a)(9) contains the language quoted in Paragraph 112. Defendants deny the remaining allegations contained in Paragraph 112.

**113.** To the extent Paragraph 113 implicitly alleges that Defendants made representations that were not true or lawful, Defendants deny all such allegations. Defendants lack knowledge or information sufficient to form a belief as to the remaining allegations contained in Paragraph 113, and on that basis deny them.

**114.** Defendants deny all allegations contained in Paragraph 114.

**115.** Defendants admit that Plaintiffs purport to have written a CLRA demand letter, dated February 23, 2015 on its face, to SWCC USA 1234, LLC. Defendants lack knowledge or information sufficient to form a belief as to the remainder of the allegations contained in the first sentence of Paragraph 115, and on that basis deny them. Defendants admit that the purported CLRA demand letter on behalf of Plaintiff Moore and the putative California Class states that it was sent via certified mail with a return receipt requested, and purports to give advice to and make demands of SWCC USA 1234, LLC. Defendants admit that the labeling for certain Manuka honey products was changed. Defendants deny that Wedderspoon Organic Inc. was involved in the labeling change. Defendants further deny the implied allegation that the Products' labels changed as a result of Plaintiffs' purported CLRA demand letter, and deny the remaining allegations contained in Paragraph 115.

**116.** Defendants admit that letters, dated August 11, 2015 on their face, were sent to answering Defendants (that is, Wedderspoon Organic USA, LLC, Wedderspoon Organic Inc., and Wedderspoon Organic Holdings, LP). Defendants admit that Plaintiffs' lawyers sent the letters on behalf of Plaintiffs and the purported California Class, purporting to advise Defendants that they were in violation of the CLRA and demanding that they cease and desist and make full restitution. Defendants deny the remainder of the allegations contained in Paragraph 116.

**117.** Paragraph 117 contains Plaintiffs' characterization of their sought-after relief, and does not require a response. To the extent that a response is required, Defendants deny the allegations therein, including but not limited to denying that Plaintiffs are entitled to any relief.

**COUNT IV**
**[California Unfair Competition Law**
**California Business & Professions Code §§ 17200, *et seq.*]**

**118.** Defendants reallege and incorporate by reference their responses contained in all preceding paragraphs.

**119.** Paragraph 119 contains Plaintiffs' characterizations of this action and does not require a response. To the extent a response is required, Defendants deny all allegations contained in Paragraph 119.

**120.** Defendants deny all allegations contained in Paragraph 120.

**121.** Defendants deny all allegations contained in Paragraph 121.

**122.** Defendants deny all allegations contained in Paragraph 122.

**123.** Defendants deny all allegations contained in Paragraph 123.

**124.** Defendants deny all allegations contained in Paragraph 124.

**125.** Defendants lack knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 125, and on that basis deny them.

**126.** Defendants deny all allegations contained in Paragraph 126.

**COUNT V**
**[California False Advertising Law,**
**California Business & Professions Code §§ 17200, *et seq.*]**

**127.** Defendants reallege and incorporate by reference their responses contained in all preceding paragraphs.

**128.** Paragraph 128 contains Plaintiffs' characterizations of this action, and does not require a response. To the extent a response is required, Defendants deny all allegations contained in Paragraph 128.

**129.** Defendants deny all allegations contained in Paragraph 129.

**130.** Defendants deny all allegations contained in Paragraph 130.

**131.** Defendants deny all allegations contained in Paragraph 131.

**132.** Defendants deny all allegations contained in Paragraph 132.

**133.** Defendants deny all allegations contained in Paragraph 133.

**134.** Defendants deny all allegations contained in Paragraph 134.

**COUNT VI**
**[Negligent Misrepresentation (All States)]**

**135.** Defendants reallege and incorporate by reference their responses contained in all preceding paragraphs.

**136.** Defendants deny all allegations contained in Paragraph 136.

**137.** Defendants deny all allegations contained in Paragraph 137.

**138.** Defendants deny all allegations contained in Paragraph 138.

**139.** Defendants deny all allegations contained in Paragraph 139.

**140.** Defendants deny all allegations contained in Paragraph 140.

**141.** Defendants deny all allegations contained in Paragraph 141.

**142.** Defendants deny all allegations contained in Paragraph 142.

**143.** Defendants deny all allegations contained in Paragraph 143.

**144.** Defendants deny all allegations contained in Paragraph 144.

**145.** Defendants deny all allegations contained in Paragraph 145.

**146.** Defendants deny all allegations contained in Paragraph 146.

**COUNT VII**
**[Breach Of Express Warranties (All States)]**

**147.** Defendants reallege and incorporate by reference their responses contained in all preceding paragraphs.

**148.** Defendants deny all allegations contained in the first and second sentences of Paragraph 148. Defendants lack knowledge or information sufficient to form a belief as to the remaining allegations contained in Paragraph 148, and on that basis deny them.

**149.** Defendants deny all allegations contained in Paragraph 149.

**150.** Defendants deny all allegations contained in Paragraph 150.

**COUNT XIV**
**[Unjust Enrichment (All States)]**

**151.** Defendants reallege and incorporate by reference their responses contained in all the preceding paragraphs.

**152.** Paragraph 152 contains Plaintiffs' characterizations of this action and does not require a response. To the extent a response is required, Defendants deny all allegations contained in Paragraph 152, including that this action satisfies the requirements of Federal Rule of Civil Procedure 23.

**153.** Paragraph 153 contains Plaintiffs' legal conclusions, and does not require a response. To the extent a response is required, Defendants deny the allegations contained in Paragraph 153 and deny that Paragraph 153 contains a correct and/or complete statement of law.

**154.** Defendants deny all allegations contained in Paragraph 154.

**155.** Defendants deny all allegations contained in Paragraph 155.

**156.** Defendants lack knowledge or information sufficient to form a belief as to the allegations contained in the first sentence of Paragraph 156, and on that basis deny them. Defendants deny all the remaining allegations contained in Paragraph 156.

**157.** Defendants deny all allegations contained in Paragraph 157.

**158.** Defendants deny all allegations contained in Paragraph 158.

## PRAYER FOR RELIEF

The paragraphs in the section entitled "Prayer for Relief" are Plaintiffs' statement of requested relief, to which no response is required; to the extent that a response is required, Defendants deny the allegations therein, including but not limited to denying that Plaintiffs are entitled to any relief.

## DEMAND FOR TRIAL BY JURY

The paragraph in the section entitled "Demand For Trial By Jury" is Plaintiffs' demand for a jury trial, to which no response is required.

## DEFENDANTS' AFFIRMATIVE DEFENSES

Defendants assert the following separate defenses to Plaintiffs' FAC, without assuming the burden of proof on such defenses that would otherwise fall on Plaintiffs. Defendants reserve the right to supplement or amend these defenses as discovery is conducted, and do not knowingly or intentionally waive any applicable affirmative defense.

### FIRST DEFENSE
### (Failure to State a Claim)

The FAC, and each and every claim alleged therein, fails to state a claim upon which relief can be granted.

### SECOND DEFENSE
### (Lack of Article III Standing)

Plaintiffs and putative class members have no standing to bring this action under Article III of the United States Constitution, and therefore the Court lacks subject-matter jurisdiction.

### THIRD DEFENSE
### (Lack of UCL Standing)

Plaintiffs and putative class members have no standing to bring this action under California Business and Professions Code Section 17200, *et seq*.

**FOURTH DEFENSE**
**(Personal Jurisdiction)**

Plaintiffs' and putative class members' claims are barred in whole or in part against Wedderspoon Organic Inc. because Wedderspoon Organic Inc. is not subject to personal jurisdiction in the state of New York.

**FIFTH DEFENSE**
**(Not Maintainable as a Class Action)**

This action is not suitable for class action treatment under Federal Rule of Civil Procedure 23.

**SIXTH DEFENSE**
**(No Entitlement to Attorney's Fees)**

Plaintiffs' and putative class members' claim for attorneys' fees is not authorized by statute or by contract, and is therefore improper.

**SEVENTH DEFENSE**
**(No Entitlement to Pre- or Post-Judgment Interest)**

Plaintiffs' and putative class members' request for interest is not authorized by statute, and is improper.

**EIGHTH DEFENSE**
**(Failure to Satisfy CLRA Notice Requirement)**

Plaintiffs' and putative class members' California Consumer Legal Remedies Act claims are barred by failure to serve CLRA-compliant notice letters on Defendants.

**NINTH DEFENSE**
**(Truth)**

Plaintiffs' and putative class members' claims are barred by virtue of the truth of Defendants' marketing, advertising, labeling, promotion, packaging, statements, and assertions.

**TENTH DEFENSE**
**(Not Fraudulent)**

Plaintiffs' and putative class members' claims are barred by the fact that Defendants' marketing, advertising, labeling, promotion, packaging, statements, and assertions were not false, misleading, or fraudulent.

**ELEVENTH DEFENSE**
**(Not Claim of Fact)**

Plaintiffs' and putative class members' claims are barred because the alleged misleading, deceptive, or fraudulent marketing, advertising, labeling, promotion, packaging, statements, and assertions were such that no reasonable person in Plaintiffs' positions could have reasonably relied on or misunderstood the statements as claims of fact.

**TWELFTH DEFENSE**
**(Good Faith)**

Defendants have acted reasonably and in good faith with respect to the conduct alleged in the FAC.

**THIRTEENTH DEFENSE**
**(Comparative Fault)**

Without admitting any damages were suffered by Plaintiffs or putative class members, other defendants, their agents and employees, Plaintiffs, and/or putative class members were comparatively at fault and, should Plaintiffs or the putative class members recover damages against Defendants, then these answering Defendants are entitled to have the amount abated, reduced, or eliminated.

**FOURTEENTH DEFENSE**
**(Apportionment)**

Without admitting that any damages were suffered by Plaintiffs or putative class members, should Plaintiffs or the putative class members recover damages against Defendants, those damages were proximately caused by and contributed to by persons other than these answering Defendants. The liability of all defendants and responsible parties, named or unnamed, should be apportioned according to the relative degrees of fault, and the liability of these answering Defendants should be reduced accordingly.

**FIFTEENTH DEFENSE**
**(Economic Loss Doctrine)**

Plaintiffs' and putative class members' tort claim(s) are barred by the economic loss doctrine.

**SIXTEENTH DEFENSE**
**(Preemption)**

Plaintiffs' and putative class members' claims are preempted, in whole or in part, pursuant to the Supremacy Clause of the United States Constitution and applicable federal statutes and regulations.

**SEVENTEENTH DEFENSE**
**(Commercial Speech Protection)**

Plaintiffs' and putative class members' claim(s) are barred in whole or in part because the speech of Defendants was not false or misleading and is protected under the First Amendment of the United States Constitution and the California Constitution.

**EIGHTEENTH DEFENSE**
**(Failure to State a Claim for Alter-Ego Liability)**

The FAC fails to state a claim for alter ego liability against Defendants for each and every cause of action.

**NINETEENTH DEFENSE**
**(No Material Misrepresentation)**

Plaintiffs' and putative class members' claims are barred, in whole or in part, because the alleged statements did not contain any actionable misrepresentations or omissions, all statements alleged to have been made had a reasonable basis in fact, and any alleged misrepresentations or omissions were not material.

**TWENTIETH DEFENSE**
**(No Reasonable Reliance)**

Plaintiffs' and putative class members' claims are barred, in whole or in part, because Plaintiffs and putative class members did not reasonably rely on any alleged untrue or misleading statement(s) of material fact when they purportedly purchased the Products.

**TWENTY-FIRST DEFENSE**
**(No Punitive Damages)**

Plaintiffs and putative class members are not entitled to recover punitive damages because the allegations in the FAC are not sufficient to substantiate an award of punitive damages.

**TWENTY-SECOND DEFENSE**
**(Equitable Estoppel)**

Each and every cause of action in the complaint is barred by the doctrine of equitable estoppel.

**TWENTY-THIRD DEFENSE**
**(Laches)**

Each and every cause of action in the complaint is barred by the doctrine of laches.

**TWENTY-FOURTH DEFENSE**
**(Failure to Satisfy Notice Requirement)**

Plaintiffs' breach of express warranty cause of action is barred by their failure to satisfy requisite notice requirements. *E.g.*, N.Y. U.C.C. Law § 2607; Cal. Com. Code §2607.

**TWENTY-FIFTH DEFENSE**
**(No Special Duty of Care)**

Plaintiffs' are not entitled to recover on their negligent misrepresentation cause of action because Defendants did not owe them the special duty of care required by law.

**Reservation of Defenses**

Future discovery may reveal additional facts that support additional affirmative defenses presently available to, but unknown to, Defendants. Defendants reserve the right to assert additional affirmative defenses as appropriate.

**DEFENDANTS' DEMAND FOR JURY TRIAL**

Defendants demand a jury trial on all issues so triable.

**PRAYER**

Wherefore, Defendants pray:

**1.** that Plaintiffs and putative class members take nothing by reason of their FAC, and that the FAC be dismissed in its entirety with prejudice;

**2.** that judgment be entered thereon in favor of Defendants;

**3.** that Defendants be awarded their costs of suit incurred in the defense of this action; and

**4.** for such other and additional relief as the Court deems proper.

Dated: September 10, 2015

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